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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,834	10/25/2001	Satoshi Kudo	01670/HG	8652

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/019,834

Applicant(s)

KUDO ET AL.

Examiner

Lakshmi S Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1615

### **DETAILED ACTION**

Receipt of request for extension of time and amendment A dated 6-30-03 is acknowledged.

Claims 1-17 are pending.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Instant claims are amended to recite that the conjugated fatty acid glycerides contains a predominant proportion of triglycerides.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2 and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,177,580 to Timmerman et al ('580).

Art Unit: 1615

'580 discloses a process of making synthetic triglycerides esters by reacting a glycerol with a fatty acid mixture containing at least 50% by weight, based on the weight of the fatty acid mixture, of conjugated linoleic acid so as to form a glycerides. '580 describes conjugated linoleic acids as those distinguished from other fatty acids by the presence of double bonds at carbon atoms 9 and 11, 10 and 12 and 11 and 13 (col. 1, lines 11-16), and thus meet the claim 1 requirement that the conjugated fatty acid contains internal double bonds. With respect to the percentage of triglycerides claimed, '580 disclose that upon esterification of glycerol with conjugated linoleic acid, the resulting product contains 80 to 98% triglycerides content (also table 3 shows the % of mono-, di- and triglycerides of the glycerides). In particular, '580 disclose conjugated linoleic acid as a 9,11-octadecandienoic acid and 10, 12-octadecandienoic acids (col. 3, lines 52-56). Thus, '580 anticipate instant claims.

### ***Claim Rejections - 35 USC § 103***

Claims 3-8 and 15-17 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,177,580 to Timmerman et al ('580) in view of Cook et al or Cook in view of '580.

'580, discussed above teach conjugated fatty acid triglycerides containing 80-98% triglycerides content. '580 fail to specify the method of treating obesity, improving lipid metabolism, or treating hyperlipidemia as claimed. However, '580 teach that the above triglycerides are comparable with pure conjugated linoleic acid in antioxidant and color stabilizing effects when used in foods. '580 also suggest using the above triglycerides in foods and pharmaceutical industry for organoleptic property and also since they can be readily incorporated in fat-containing foods (col.2). '580 suggest that the glycerides of their invention

Art Unit: 1615

can be used in all areas in which conjugated fatty acids are used. '580 also fail to teach instant soybean milk, capsule or a tablet form.

Cook et al teaches a method of reducing body fat and a method of preventing loss of protein using compositions containing conjugated linolenic acid (CLA, col. 1, lines 16-60 and col. 2, example 3). Cook et al suggests administering CLA as pharmaceutical or veterinary compositions such as tablets, capsule, food supplement etc (col. 3, lines 60-67 and col. 4, lines 1-5). Cook teaches conjugated fatty acid but not glycerides of conjugated fatty acid as claimed.

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use triglycerides for controlling body fat (obesity) and hyperlipidemia because Cook suggests that CLA is effective in reducing body fat and thus aids in dieting for humans and also effective in reducing the fat content of meats and that CLA can be administered any desired form. Alternatively, it would have been obvious for one of an ordinary skill in the art to use triglycerides of '580 in the place of CLA of Cook for reducing body fat because '580 suggests that the glycerides have properties comparable to CLA and in addition have better organoleptic properties and hence a substitute for CLA. Further formulating the glycerides containing conjugated linoleic acid of '580 as a dietary supplement such as milk or as a pharmaceutical or nutritional supplement (such as tablet or a capsule etc) with an expectation to provide effective treatment for obesity would have been within the scope of a skilled artisan.

Art Unit: 1615

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615  
September 15, 2003

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600